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## ARTICLE II TRANSFER OF ASSETS AND LIABILITIES

2.1 Assets to be Sold. Subject to Sections 2.2, 2.5, 2.6, 2.7 and 6.2, the other provisions of this Agreement and the Sale Order, at the Closing, Sellers shall sell, convey, assign, transfer and deliver to Buyer free and clear of all Liens and Liabilities (other than Permitted Liens of the type included in clause (iii) of the definition of Permitted Liens), and Buyer shall purchase, acquire, and accept all of Sellers' right, title and interest in and to all of Sellers' properties, assets and rights of every nature, kind and description, tangible and intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise and whether now existing or hereafter acquired, including the following (collectively, the "Acquired Assets"):

(a) The leases or subleases and all amendments thereto under which any of Sellers is a lessor or lessee or sublessor or sublessee of real property (collectively, the "Real Property Leases") as set forth on the Assumed Contracts List, including all improvements, fixtures and other appurtenances thereto and rights in respect thereof and any related security deposits;

(b) The furniture, fixtures, equipment, machinery, supplies, vehicles, inventory, and other tangible personal property, including the network equipment assets and facilities owned or used by Sellers (collectively, the "Equipment");

(c) The leases which relate to Equipment and leases of dark fiber (collectively, the "Personal Property Leases") as set forth on the Assumed Contracts List;

(d) All Communications Licenses and any other Licenses, including those listed on Schedule 2.1(d) of the Disclosure Schedules, to the extent the same are transferable or assignable pursuant to section 365 of the Bankruptcy Code or as otherwise permitted by Law (or, to the extent not transferable or assignable, all right,

title and interest in such Licenses, to the fullest extent such right, title and interest may be transferred or assigned), provided, that to the extent that Buyer does not require any such Communications License or Licenses, it may in its sole discretion decline to acquire such Communications License or Licenses by providing written notice to Sellers prior to the Closing Date, in which case such a License shall not be an Acquired Asset hereunder.

(e) The Assumed Contracts not described in Section 2.1(a) or 2.1(c) above, including any related security deposits (including the deposits described in Section 3.5(b) hereof), advance payments, customer advances and customer deposits;

(f) Except as set forth in Section 2.2(e) and 2.2(f), all rights, demands, claims, actions, rights of set off, counterclaims and causes of action of any kind (collectively, the "Claims") brought by or for the benefit of any Seller relating to the operation of the Business;

(g) Accounts, notes and other receivables of Sellers (other than pre-Petition carrier gross accounts receivable, including those of ILECs which were recorded on the books and records of Sellers as of May 14, 2003, in an amount up to \$58.3 million);

(h) Any books, records, files or papers of Sellers, whether in hard copy or computer format, relating to the Acquired Assets or the Non-Transferred Assets (upon such assets becoming Acquired Assets) or to the operation of the Business, including management information systems or software owned by Sellers, engineering information, sales and promotional literature, manuals and data, sales and purchase correspondence, personnel and employment records, customer lists, customer information, vendor lists, catalogs, research material, source codes, carrier identification codes, technical information, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data, if any, or any other intangible property and applications for the same but excluding any books, records, files or papers that relate to any Tax of Sellers that are Excluded Liabilities;

(i) Any of Sellers' right, title or interest in or to any of Sellers' patents, patent registrations, patent applications, trademarks (including "*allegiancetelecom,inc.*" and design), trademark registrations, trademark applications, tradenames, copyrights, copyright applications, and copyright registrations relating to the Business and the rights to sue for, and remedies against, past, present and future infringements thereof and the rights of priority and protection of interests therein under applicable laws (collectively, the "Intellectual Property");

(j) Any computer software programs and databases used by any Seller, whether owned, licensed, leased, or internally developed to the extent the same are transferrable or assignable pursuant to section 365 of the Bankruptcy Code or as otherwise permitted by Law (or, to the extent not transferrable or assignable, all right, title and interest in such programs and databases, to the fullest extent such right, title and interest may be transferred or assigned);

(k) All taxation matrixes utilized by Sellers in the determination of the taxability of products sold by Sellers, other than those which are commercially available;

(l) Any telephone numbers, electronic mail addresses, carrier identification codes and local exchange codes used by Sellers in the conduct of the Business;

(m) All of Sellers' currently allocated, assigned, used and unused internet protocol addresses, domain names, and autonomous system numbers from applicable authorities governing the use and structure of the Internet, including the American Registry for Internet Numbers;

(n) All bank accounts and lock-boxes, including those listed on Schedule 2.1(n) of the Disclosure Schedules;

(o) All transferable rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided, to Sellers or to the extent affecting any Acquired Assets;

(p) All rights of Sellers under non-disclosure, confidentiality, non-compete or non-solicitation agreements with employees or agents of Sellers or with third parties;

(q) All insurance claims and insurance proceeds (other than with respect to any director and officer, errors and omissions, fiduciary and commercial crime policies) in respect of an Acquired Asset or an Assumed Liability; and

(r) All security, vendor, utility and other deposits.

2.2 Excluded Assets. The Acquired Assets shall not include any of Sellers' right, title or interest in or to any assets or properties of Sellers that are expressly enumerated below (collectively, the "Excluded Assets");

(a) Subject to Section 2.1(q), cash and cash equivalents, short-term and long-term investments, or similar type investments, uncollected checks and funds in transit to the extent there is a corresponding reduction in accounts receivable included in Acquired Assets, Treasury bills and other marketable securities existing as of the Closing Date ("Cash and Cash Equivalents");

(b) Bank accounts and lock-boxes described as "Excluded Assets" on Schedule 2.1(n) of the Disclosure Schedules;

(c) Any security, vendor, utility or other deposits (but only to the extent such deposits specifically relate to Excluded Assets or Excluded Liabilities);

(d) Any Contracts other than the Assumed Contracts;

(e) All Claims that Sellers or any of their respective Affiliates may have against any third party, including any Governmental Entity, for causes of action based on Chapter 5 of the Bankruptcy Code ("Avoidance Actions") and for refund or credit of any type with respect to Taxes accrued or paid with respect to periods (or any portion thereof) ending on or prior to the Closing Date;

(f) All Claims which Sellers or any of their respective Affiliates may have against any third Person with respect to any Excluded Asset or Excluded Liability;

(g) The capital stock of Shared Technologies, which is a Subsidiary of ATCW, but is not a Seller hereunder, and its assets;

(h) The Shared Hosting Business, including Contracts, accounts receivable, equipment and Intellectual Property specifically related thereto.

(i) The capital stock of each Seller and each Seller's corporate books and records relating to its organization and existence;

(j) Any director and officer, errors and omissions, fiduciary or commercial crime insurance policies and related insurance claims and insurance proceeds;

(k) All insurance policies;

(l) Any real property which is owned by any of Sellers ("Owned Real Property");

(m) Any loans or notes payable to any Seller from any employee of any Seller, other than Ordinary Course of Business employee advances;

(n) Pre-Petition carrier gross accounts receivable, including those of ILECs, which were recorded on Sellers' books and records as of May 14, 2003, in an amount up to \$58.3 million;

(o) Any assets set forth in Schedule 2.2(o) of the Disclosure Schedules.

2.3 Liabilities to be Assumed by Buyer. Subject to Sections 2.4, 2.5 and 6.2, upon the transfer of the Acquired Assets on the Closing Date, Buyer shall assume only the following Liabilities of Sellers (collectively, the "Assumed Liabilities");

(a) Liabilities arising out of or relating to the ownership of the Acquired Assets and the operation of the Business by Buyer or any of its assignees, including Liability for personal injury of customers or employees, but in each case only to the extent that the event or state of facts giving rise to such Liability occurs after the Closing;

(b) (i) Liabilities under the Assumed Contracts, but only to the extent that the event or state of facts giving rise to such Liability occurs after the Closing, and (ii) any post-Petition Liabilities under the Assumed Contracts incurred in the Ordinary Course of Business but only to the extent such Liabilities are reflected in Sellers' financial statements as of the Closing Date and taken into account in the determination of Closing Working Capital;

(c) (i) Liabilities under trade accounts payable arising in the Ordinary Course of Business and (ii) current Liabilities arising in the Ordinary Course of Business under the accounts set forth on Exhibit K, and in each case only to the extent that (x) the event or state of facts giving rise to such Liability occurs post-Petition and (y) such Liabilities are reflected in Sellers' financial statements as of the Closing Date and taken into account in the determination of Closing Working Capital; provided, however, that Buyer shall not assume any of Sellers' Liabilities for professional fees and other related costs of administering the Cases;

(d) Liabilities for fifty percent (50%) of any and all Transfer Taxes due as a result of the transactions contemplated by this Agreement as set forth in Section 6.10;

(e) Liabilities for severance costs (the amount thereof in accordance with Sellers' currently existing severance policy and past practice as described in Exhibit L) related to non-Transferred Employees who are Employees on the date hereof or hired in the Ordinary Course of Business thereafter and are terminated at Buyer's request after the date hereof and Liabilities to Sellers' employees pursuant to Section 6.8(b); provided, however, that in no event shall Buyer be responsible for more than six (6) months of severance per Employee;

(f) Liabilities associated with customers of the Business, including credits or refunds due such customers for any reason, to the extent that the event or state of facts giving rise to such Liabilities occurs post-Closing; and

(g) Liabilities related to any obligations under Section 4980B of the Internal Revenue Code to provide continuation of group medical coverage on and after the Closing with respect to any employee or former employee employed in connection with the Business or other qualified beneficiary but only to the extent Buyer may be required to assume any such Liability by Law.

2.4 Excluded Liabilities. Buyer shall not assume, and shall not be deemed to have assumed, any Liabilities of Sellers, and Sellers shall be solely and exclusively liable and shall indemnify and hold harmless Buyer and its Affiliates with respect to all Liabilities of Sellers other than the Assumed Liabilities, including those Liabilities set forth below (collectively, the "Excluded Liabilities"):

(a) Any Liabilities which arise, whether before, on or after the Closing, out of, or in connection with, the Excluded Assets, including any Contract which is not an Assumed Contract;

- (b) Any Liabilities under the Assumed Contracts or accounts payable to the extent not assumed pursuant to Section 2.3;
- (c) Any Liabilities arising from a breach of an Assumed Contract to the extent that the event or state of facts giving rise to such Liability occurs pre-Closing;
- (d) Any Liabilities arising out of, or in connection with, any pending or threatened Litigation arising out of the operation of the Business to the extent that the event or state of facts giving rise to such Liability occurs pre-Closing;
- (e) Any Liabilities arising out of or in connection with any indebtedness of Sellers or any of their respective Affiliates to their lenders, noteholders or otherwise (other than, to the extent provided in Section 2.3, post-petition Liabilities relating to Assumed Contracts which are characterized as capital leases by Sellers);
- (f) Any Liabilities for which Sellers have received an invoice which is not taken into account in the determination of Closing Working Capital;
- (g) Liabilities related to Shared Technologies or the Shared Hosting Business;
- (h) Liabilities related to the Owned Real Property;
- (i) Any Liabilities of Sellers or any Affiliate thereof (or any predecessor thereto) relating to Taxes (other than Transfer Taxes referred to in Section 2.3(d) and Taxes described on Exhibit K), including all Taxes attributable to or incurred in any period (or portion thereof) ending on or before the Closing Date;
- (j) All Liabilities of any Seller, any of their Affiliates or any predecessor of any Seller resulting from, caused by or arising out of, directly or indirectly, the conduct of the Business or any Seller's ownership, operation or lease of any properties or assets or any properties or assets previously used in the Business by any Seller, any of their Affiliates or any predecessor of any Seller at any time pre-Closing, that constitute, may constitute or are alleged to constitute a violation of or Liability arising under any Environmental Law or other Law including any state or federal communications law or regulation;
- (k) All Liabilities arising from or relating to the employment, or termination of employment, of any Employee, former Employee, independent contractor or contingent worker with respect to the Business, including pursuant to Employee Benefit Plans, other than those specifically assumed pursuant to Section 2.3 and 6.8 herein; and
- (l) All Liabilities arising from or relating to any collective bargaining agreement, including any obligation for benefits to employees covered thereunder and, specifically, any Multiemployer Plan liability.

2.5 Non-Transferred Assets. Notwithstanding the foregoing provisions of Article II, and subject to Section 6.2 and the Management Agreements, the parties agree that, to the extent that as of the Closing (i) certain of the Acquired Assets cannot be transferred to Buyer pending the issuance of further FCC Consents or State PUC Consents or (ii) certain of the Acquired Assets are associated with one or more interconnection agreements, for which the ILEC's consent is required and which are reasonably necessary, in Buyer's sole discretion, to the operation of the Acquired Assets ("Required Interconnection Agreements") and receipt of any ILEC consents or expiration of any notice periods necessary to assign such Required Interconnection Agreements remains pending as of the Closing, Sellers shall retain such assets (the "Non-Transferred Assets") pending receipt of such consents or expiration of such notice periods. For the avoidance of doubt, Buyer shall have the right, in its sole discretion, to designate any Acquired Asset (including any Required Interconnection Agreement) as a Non-Transferred Asset. During the period that the Non-Transferred Assets are held by Sellers, Buyer will provide management services to Sellers pursuant to the Management Agreements. Upon receipt from time to time of any such necessary consents, such Non-Transferred Assets as are subject to such consents shall be transferred to Buyer and Buyer will assume all related Assumed Liabilities; and within five (5) Business Days of Buyer's written request, Sellers will deliver a bill of sale and the requirements of Section 3.1 below shall have been deemed to be satisfied as if such Non-Transferred Assets and related Assumed Liabilities had otherwise been transferred to and assumed by Buyer at the Closing. With respect to assets that are designated by Buyer as Non-Transferred Assets and which are not subject to obtaining any further consents after the Closing, such Non-Transferred Assets shall be transferred to Buyer and Buyer will assume all related Assumed Liabilities, within five (5) Business Days of Buyer's written request, at which time Sellers will deliver a bill of sale and the requirements of Section 3.1 below shall have been deemed to be satisfied as if such Non-Transferred Assets had otherwise been transferred to Buyer at the Closing. In addition, Non-Transferred Assets shall include all of the Seller Marks, which shall be licensed to Buyer upon the Closing as set forth in the Management Agreements. After the expiration or termination of the Management Agreements, upon the written request of Buyer, all right, title and interest in and to the Seller Marks shall be transferred to and vest in Buyer.

2.6 Contract Assignment. Notwithstanding any provision to the contrary herein, Buyer and Sellers agree that there shall be excluded from the Acquired Assets any Assumed Contract that is not assignable or transferable pursuant to the Bankruptcy Code without the consent of any Person other than Sellers or any Affiliate of Sellers, to the extent that such consent shall not have been given on or prior to the Closing; provided, however, that Sellers shall use commercially reasonable efforts (including prosecution of appropriate motions pursuant to Section 365 of the Bankruptcy Code) to endeavor to obtain all necessary consents to the assignment thereof, and, upon obtaining the requisite consents thereto, such Acquired Asset shall be assigned to Buyer. Notwithstanding any provision to the contrary herein, Buyer and Sellers agree that all reasonable out-of-pocket costs and expenses (other than Cure Amounts) incurred relating to Sellers' assignment to Buyer of the Assumed Contracts set forth on Schedule 2.6 of the Disclosure Schedules shall be shared equally between Buyer and Sellers.

2.7 Alternative Structure. Notwithstanding Section 2.1, after the Sale Order Approval Date, Buyer shall have the right, on at least fifteen (15) Business Days notice to ATI, to require Sellers to transfer immediately prior to the Closing, some or all of the Equipment or other Acquired Assets to one or more newly formed Delaware limited liability companies to be formed and owned by one or more Sellers. If Buyer gives such notice, the membership interests in such limited liability companies shall be deemed Acquired Assets hereunder and Buyer shall acquire such membership interests at the Closing without the payment of any additional consideration. Buyer shall be permitted to give one or more notices pursuant to this Section 2.7. In addition, at Buyer's option, a similar procedure will apply to any Equipment or other Acquired Assets which constitutes a Non-Transferred Asset. Fifty percent (50%) of all reasonable out-of-pocket costs and expenses incurred in connection with Sellers' performance of this Section 2.7 shall be borne by each of Buyer and Sellers.

### ARTICLE III CLOSING

#### 3.1 Closing; Transfer of Possession; Certain Deliveries.

(a) Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article VIII hereof, the closing of the transactions contemplated herein (the "Closing") shall take place no later than the fifth (5th) Business Day following the date on which the conditions set forth in Article VII have been satisfied or waived (other than those conditions with respect to actions of the parties to be taken at the Closing itself, but subject to the satisfaction or waiver of such conditions), or on such other date as the parties hereto shall mutually agree; provided, however, that if the Closing would be scheduled to occur less than two (2) Business Days after the receipt of the performance reports for the prior month referred to in Section 6.5(d) hereof, Buyer shall not be required to close until two (2) Business Days after its receipt of such performance reports. The Closing shall be held at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022, at 5:00 p.m., local time, unless the parties hereto otherwise agree. The actual time and date of the Closing are herein called the "Closing Date."

(b) At the Closing, Sellers shall deliver to Buyer:

- (i) A duly executed bill of sale substantially in the form attached hereto as Exhibit D;
- (ii) A certified copy of the Sale Order;
- (iii) The officer's certificates required to be delivered pursuant to Section 7.2(c) hereof;
- (iv) Assignments of lease and customary title affidavits;

(v) A certification of non-foreign status for each Seller in the form required under Treasury Regulation Section 1.1445-2(b); and

(vi) All other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer and Sellers, as may be necessary to convey the Acquired Assets to Buyer or Buyer's designee.

(c) At the Closing, Buyer shall deliver to ATI (on behalf of Sellers):

(i) The Cash Purchase Price, plus or minus, the applicable adjustments to the Purchase Price as set forth in Section 3.2(a)(x) below;

(ii) The Convertible Note;

(iii) All certificates required by all relevant taxing authorities that are necessary to support any available exemption from the imposition of Transfer Taxes;

(iv) Certified resolutions of the Board of Directors of Buyer authorizing the execution, delivery and performance of the Transaction Documents and the transactions contemplated by this Agreement;

(v) The officer's certificate required to be delivered pursuant to Section 7.3(c) hereof; and

(vi) An assumption agreement substantially in the form attached hereto as Exhibit E.

### 3.2 Purchase Price.

(a) In consideration for the Acquired Assets, and subject to the terms and conditions of this Agreement, at the Closing, Buyer shall assume the Assumed Liabilities as provided in Section 2.3 and shall (x) pay to ATI (on behalf of Sellers) in immediately available funds, by wire transfer to an account or accounts designated by ATI, an amount in cash equal to (i) Three Hundred Million Dollars (\$300,000,000.00) (the "Cash Purchase Price"), (ii) plus or minus, as the case may be, the Initial Working Capital Adjustment (if any) set forth in Section 3.4(f), (iii) minus the Escrow Amount, (iv) minus the Earnest Money Deposit, (v) minus the portion of the Performance Adjustment Amount that is to be settled in cash as determined in accordance with Section 3.6(a) (if any), (vi) plus or minus, as the case may be, the ILEC Cure Adjustment (if any) set forth in Section 3.5(a), (vii) plus the Deposit Adjustment Amount (if any) and (viii) plus the Non-ILEC Cure Adjustment (if any) set forth in Section 3.5(c) and (y) deliver to ATI the Convertible Note in the principal amount of Ninety Million Dollars (\$90,000,000) as such amount may be reduced by that portion of the Performance Adjustment Amount that is to be settled by reduction in the face amount of the Convertible Note in accordance with Section 3.6(a) (the "Convertible Note Amount"), and together with the Cash Purchase Price, the "Purchase Price". The Cash Purchase Price is subject to the adjustments described in Section 3.4, Section 3.5 and Section 3.6 below.

(b) On the Closing Date, Buyer shall wire the Escrow Amount into an escrow account (the "Escrow Account") with a bank to be mutually agreed upon to act as escrow agent (the "Escrow Agent") pursuant to an escrow agreement, to be entered into on the Closing Date (the "Closing Escrow Agreement"), among ATI, ATCW, Buyer and the Escrow Agent, substantially in the form of Exhibit F-1 hereto, and otherwise in form and substance reasonably acceptable to ATI, ATCW and Buyer. Any payment Sellers are obligated to make to Buyer pursuant to Sections 3.4 and/or 3.6 shall be paid from the Escrow Amount plus accrued interest thereon. After payment of any required amounts pursuant to Sections 3.4 and 3.6, the Escrow Agent shall release the residual amounts of the Escrow Amount remaining in the Escrow Account to ATI.

3.3 Earnest Money Deposit. Within five (5) Business Days after the date hereof, Buyer shall pay in immediately available funds, by wire transfer to an escrow account with a bank to be mutually agreed upon to act as escrow agent (the "Earnest Money Escrow Agent") pursuant to an escrow agreement among ATI, ATCW, Buyer and the Earnest Money Escrow Agent (the "Earnest Money Escrow Agreement"), substantially in the form attached hereto as Exhibit F-2, an earnest money deposit equal to Thirty Million Dollars (\$30,000,000) (the "Earnest Money Deposit"). At the Closing, (i) the Earnest Money Deposit shall be deducted from the Cash Purchase Price, (ii) the Earnest Money Deposit shall be paid to Sellers immediately upon Sellers' instructions to the Earnest Money Escrow Agent in accordance with the terms of the Earnest Money Escrow Agreement and (iii) the accrued interest thereon shall be paid to Buyer. If Buyer terminates this Agreement in breach of Section 8.1 hereof or if ATI terminates this Agreement pursuant to Section 8.1(b) (when Buyer does not have the right to terminate this Agreement pursuant to Section 8.1(b) due to breach of the Agreement by Buyer) or Section 8.1(d) pursuant to a breach by Buyer, then Buyer and Sellers shall deliver a written notice within two (2) Business Days pursuant to the Earnest Money Escrow Agreement instructing the Earnest Money Escrow Agent to pay (i) the Earnest Money Deposit to Sellers and (ii) the accrued interest thereon to Buyer, in each case by wire transfer of immediately available funds, and Sellers shall have no further obligations to Buyer, provided, that in no event shall the payment of the Earnest Money Deposit limit any other remedies Sellers may have against Buyer in the event of any such termination. If this Agreement is terminated for any other reason, then Sellers shall deliver a written notice within two (2) Business Days pursuant to the Earnest Money Escrow Agreement instructing the Earnest Money Escrow Agent to pay the Earnest Money Deposit plus accrued interest thereon to Buyer by wire transfer of immediately available funds. Notwithstanding the foregoing, within five (5) Business Days of the date hereof, Buyer and ATI may agree that Buyer will provide an alternative credit support to Sellers in lieu of the Earnest Money Deposit, on terms reasonably acceptable to ATI.

#### 3.4 Working Capital Purchase Price Adjustment.

(a) Not less than five (5) Business Days prior to the Closing, Sellers will prepare and deliver to Buyer a good faith estimate of the Net Working Capital as of the Closing Date (the "Estimated Closing Working Capital"). Sellers will prepare the Estimated Closing Working Capital in accordance with GAAP and consistent with ATI's preparation of its unaudited balance sheet as of September 30, 2003.

(b) As promptly as practicable, but no later than sixty (60) Business Days after the Closing Date, Buyer will prepare and deliver to ATI a good faith calculation of Net Working Capital as of the Closing Date (the "Closing Working Capital"). Buyer will prepare the Closing Working Capital in accordance with GAAP and consistent with ATI's preparation of its unaudited balance sheet as of September 30, 2003. Attached as Exhibit G is a schedule showing the calculation of Base Working Capital.

(c) If Sellers disagree with Buyer's calculation of Closing Working Capital, Sellers may, within fifteen (15) days after delivery by Buyer of the statement pursuant to Section 3.4(b), deliver a notice to Buyer disagreeing with such calculation and setting forth Sellers' calculation of such amount. Any such notice of disagreement shall specify those items or amounts as to which Sellers disagree, and Sellers shall be deemed to have agreed with all other items and amounts contained in the calculation of the Closing Working Capital. If Sellers do not raise any objections to the Closing Working Capital within the period described herein, the Closing Working Capital will become final and binding upon Buyer and Sellers.

(d) If a notice of disagreement shall be duly delivered pursuant to Section 3.4(c), Buyer and Sellers shall, during the fifteen (15) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Closing Working Capital. If during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause representatives from the Dallas office of Ernst & Young LLP which representatives have not been engaged or employed within the past five years by Buyer, Sellers or any of their Affiliates (or, if Sellers and Buyer agree to another nationally recognized independent accounting firm, such other firm) (the "Accounting Referee") to review this Agreement and the disputed items or amounts for the purpose of calculating Closing Working Capital (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accounting Referee shall consider only those items or amounts as to which the parties have disagreed. The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than thirty (30) days from the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Buyer and Sellers. The cost of such review and report shall be borne by Buyer and Sellers in the reverse proportion that the aggregate dollar amounts of disputed items which are resolved in favor of Buyer or Sellers (as applicable) bears to the aggregate dollar amount of all disputed items resolved by the Accounting Referee.

(e) Buyer and Sellers shall, and shall cause their respective Representatives to, cooperate and assist in the calculation of Closing Working Capital and in the conduct of the review referred to in Section 3.4(d), including providing reasonable and timely access to the books, records, work papers and personnel involved in preparing these calculations.

(f) If Estimated Closing Working Capital (i) exceeds Base Working Capital, then at the Closing Buyer shall pay into the Escrow Account an additional amount of cash equal to such excess or (ii) is less than Base Working Capital, then the Cash Purchase Price will be reduced by an amount equal to such deficiency. Any adjustment pursuant to this Section 3.4(f) is referred to herein as the “Initial Working Capital Adjustment.”

(g) If Final Working Capital equals Estimated Working Capital, and if no further payments are or may become due pursuant to Section 3.6 hereof, then within three (3) Business Days of the final determination of such amount pursuant to this Section 3.4, Buyer and Sellers shall deliver a written notice to the Escrow Agent pursuant to the Escrow Agreement instructing the Escrow Agent to pay the Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers.

(h) If Final Working Capital exceeds Estimated Working Capital, then within three (3) Business Days of the final determination of such amount pursuant to this Section 3.4, Buyer shall pay such amount (by wire transfer of immediately available funds) to Sellers and, if no further payments are or may become due pursuant to Section 3.6 hereof, Buyer and Sellers shall deliver a written notice to the Escrow Agent pursuant to the Escrow Agreement instructing the Escrow Agent to pay the Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers.

(i) If Final Working Capital is less than Estimated Working Capital, then within three (3) Business Days of the final determination of such amount pursuant to this Section 3.4, Sellers and Buyer shall deliver a written notice to the Escrow Agent pursuant to the Escrow Agreement instructing the Escrow Agent to pay such deficit amount plus the accrued interest thereon out of the Escrow Account (by wire transfer of immediately available funds) to Buyer; provided that the Escrow Account shall be the sole source of payment for any such deficiency and in no event shall Sellers be otherwise liable for any such deficiency. To the extent any Escrow Amount remains after payment of any such deficit, and if no further payments are or may become due pursuant to Section 3.6 hereto, Buyer and Sellers shall deliver a written notice to the Escrow Agent pursuant to the Escrow Agreement instructing the Escrow Agent to pay the remaining Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers. For purposes of this Agreement, “Final Working Capital” means Closing Working Capital (i) as shown in Buyer’s calculation delivered pursuant to Section 3.4(b) if no notice of disagreement with respect thereto is duly delivered pursuant to Section 3.4(c); or (ii) if such a notice of disagreement is delivered, (A) as agreed by Buyer and Sellers pursuant to Section 3.4(d) or (B) in the absence of such agreement, as shown in the Accounting Referee’s calculation delivered pursuant to Section 3.4(d).

(j) Any adjustment under this Section 3.4 shall be treated as an adjustment to the Purchase Price for federal, state and local income Tax purposes.

### 3.5 Cure Price Adjustment.

(a) The Cure Amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults, if any, under the Sellers' interconnection agreements with incumbent local exchange carriers ("ILECs"), together with any other payments made to settle pre-Petition disputes between any of Sellers and ILECs under such agreements, under tariffs or otherwise after the date hereof (the "ILEC Cure Amounts") shall be resolved in accordance with this Section 3.5(a). Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the ILEC Cure Amounts, it being understood that all pre-Petition accounts receivable of Sellers owed by ILECs (the "ILEC Set Off Amounts") shall be set off against the ILEC Cure Amounts and thereby used as currency to pay the ILEC Cure Amounts. Buyer and Sellers agree that given this Section 3.5(a), Buyer should have standing in the Cases with regard to ILEC Cure Amounts and the parties shall take such position in the Cases. The treatment of the ILEC Cure Amounts and all matters related thereto under the Bankruptcy Plan shall be reasonably acceptable to Buyer. Sellers shall pay all ILEC Cure Amounts (whether in cash or by application of the ILEC Set Off Amounts); provided that: (i) if the ILEC Cure Amounts are less than \$40 million, the Cash Purchase Price shall be reduced by an amount equal to one-third (1/3) of the amount by which \$40 million exceeds the ILEC Cure Amounts; and (ii) if the ILEC Cure Amounts are equal to or greater than \$40 million, the Cash Purchase Price shall be increased by an amount equal to the lesser of (A) two-thirds of the amount by which the ILEC Cure Amounts exceed \$40 million and (B) \$16.667 million.

The net adjustment to the Cash Purchase Price pursuant to this Section 3.5(a) is referred to herein as the "ILEC Cure Adjustment." An illustration of the foregoing is set forth in Exhibit M. If as of the time of the Closing any reserves are established with respect to disputed ILEC Cure Amounts pending resolution of such disputes, the Purchase Price adjustments provided in this Section 3.5(a) shall be made, with respect to the agreed ILEC Cure Amounts, at the Closing, and with respect to any such reserved amounts, within two (2) Business Days following the resolution of the disputes.

Notwithstanding anything herein to the contrary (including Section 6.1(k)), prior to the Sale Order Approval Date, as between Buyer and Sellers, Sellers shall have sole control over their business relationships with the ILECs (other than Buyer itself and its Affiliates) and shall be permitted, with Buyer's consent (which will not be unreasonably withheld), to terminate, adopt and amend interconnection agreements but shall not prior to such time settle any ILEC Cure Amounts without Buyer's consent (which will not be unreasonably withheld) or take any action (including as specified above) if the intent or reasonably anticipated consequence thereof is or would be to increase the ILEC Cure Amounts generally and/or the portion thereof payable by Buyer hereunder.

(b) If deposits are required by ILECs in connection with establishing new interconnection agreements for the Business between the date hereof and the Closing and such deposits are outstanding at the time of the Closing, the Cash Purchase

Price shall be increased by an amount (the "Deposit Adjustment Amount") equal to seventy-five percent (75%) of the first \$13 million of such deposits and one hundred percent (100%) of the deposits above \$13 million.

(c) The Cure Amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults, if any, under the Assumed Contracts, other than the ILEC Cure Amounts (the "Non-ILEC Cure Amounts") shall be resolved in accordance with this Section 3.5(d). Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the Non-ILEC Cure Amounts, it being understood that all pre-Petition accounts receivable of Sellers owed by non-ILECs (the "Non-ILEC Set Off Amounts") shall be set off against the Non-ILEC Cure Amounts and thereby used as currency to pay the Non-ILEC Cure Amounts. Buyer and Sellers agree that given this Section 3.5(d), Buyer should have standing in the Cases with regard to Non-ILEC Cure Amounts and the parties shall take such position in the Cases. The treatment of the Non-ILEC Cure Amounts and all matters related thereto under the Bankruptcy Plan shall be reasonably acceptable to Buyer. Sellers shall pay all Non-ILEC Cure Amounts (whether in cash or by application of the Non-ILEC Set Off Amounts); provided that if the Non-ILEC Cure Amounts are more than \$11 million, the Cash Purchase Price shall be increased by an amount equal to the lesser of (A) two-thirds of the amount by which the Non-ILEC Cure Amounts exceed \$11 million and (B) \$8 million.

The adjustment to the Cash Purchase Price pursuant to this Section 3.5(d) is referred to herein as the "Non-ILEC Cure Adjustment." If as of the time of the Closing any reserves are established with respect to disputed Non-ILEC Cure Amounts pending resolution of such disputes, the Purchase Price adjustment provided in this Section 3.5(d) shall be made, with respect to the agreed Non-ILEC Cure Amounts, at the Closing, and with respect to any such reserved amounts, within two (2) Business Days following the resolution of the disputes.

(d) Subject to Section 8.3, (i) prior to the date of the Bankruptcy Court's auction relating to the transactions contemplated hereby, Buyer shall designate the (A) Real Property Leases identified on Schedule 4.21 of the Disclosure Schedules and (B) other Executory Contracts that are designated with an asterisk on Schedule 4.20 that are to be assumed by Sellers and not rejected pursuant to section 365 of the Bankruptcy Code and (ii) at least (20) days prior to the date of the Bankruptcy Court's confirmation of the Bankruptcy Plan, Buyer shall designate other Executory Contracts that are to be assumed by Sellers and not rejected pursuant to section 365 of the Bankruptcy Code (collectively, the "Assumed Contracts List") (those Contracts ultimately set forth on the Assumed Contracts List and as Additional Assumed Contracts pursuant to Section 8.3, if applicable are referred to herein as the "Assumed Contracts"). Such assignment and assumption by Sellers shall be made at the Closing; provided, however, that the assignment to Buyer of any Assumed Contract related to Non-Transferred Assets shall occur on the later of (i) the Closing or (ii) State PUC Consent or FCC Consent, as applicable. At Buyer's discretion, Sellers agree to assume or reject any Executory Contract, in whole or in part, to the extent portions of such Executory Contracts are severable. Buyer and Sellers agree to keep confidential and not

disclose to anyone except (x) legal counsel for the Creditors Committee in the Cases and the agent to Sellers' senior lenders, provided, that, such counsel and agent have executed confidentiality agreements reasonably acceptable to Buyer and Sellers prior to such disclosure and (y) as otherwise required by Law, the Executory Contracts that are identified by Buyer as Assumed Contracts.

### 3.6 Performance Price Adjustment.

(a) At least two (2) Business Days prior to the Closing, ATI shall prepare and deliver to Buyer a certificate setting forth the following: (i) total Retail Ending Lines as determined by Sellers in accordance with past custom and practice, as of the last day of the last full calendar month prior to the date of the Closing plus Scheduled Future Installs less Scheduled Future Disconnects as of such day ("Total Retail Net Ending Lines") and (ii) total gross end user revenue for the last full calendar month prior to the date of the Closing (the "Total Gross End User Revenue"). The Purchase Price shall be reduced by the greater of the following (the "Performance Adjustment Amount"): (x) the product of \$625.00 and the amount, if any, by which the Total Retail Net Ending Lines for Sellers' Out of Region Business is less than 730,000; and (y) the product of fifteen (15) and the amount, if any, by which Total Gross End User Revenue for Sellers' Out of Region Business is less than \$28 million. To the extent Cash and Cash Equivalents immediately prior to the Closing exceed One Hundred Eighty Seven Million Dollars (\$187,000,000), the Performance Adjustment Amount (if any) shall reduce the Cash Purchase Price until Cash and Cash Equivalents equals One Hundred Eighty Seven Million Dollars (\$187,000,000). To the extent such Cash and Cash Equivalents are less than or equal to One Hundred Eighty Seven Million Dollars (\$187,000,000) or have been reduced to such amount pursuant to the immediately preceding sentence, any remaining portion of the Performance Adjustment Amount shall be a reduction in the face amount of the Convertible Note. ATI's certificate shall include a calculation of the Performance Adjustment Amount.

(b) If Buyer disagrees with the certificate delivered by ATI pursuant to Section 3.6(a) hereof, Buyer may, within thirty (30) days after Closing, deliver a notice to ATI disagreeing with the calculations contained in such certificate and setting forth Buyer's calculations. Any such notice of disagreement shall specify those items or amounts as to which Buyer disagrees, and Buyer shall be deemed to have agreed with all other items and amounts contained in the calculation of the Performance Adjustment Amount. If Buyer does not raise any objections to the Performance Adjustment Amount within the period described herein, the Performance Adjustment Amount will become final and binding upon Buyer and Sellers (the "Final Performance Adjustment Amount"). In such event, if no further payments are or may become due pursuant to Section 3.4 hereof, ATI, ATCW and Buyer shall deliver a written notice to the Escrow Agent pursuant to the Escrow Agreement instructing the Escrow Agent to pay the Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to ATI.

(c) If a notice of disagreement shall be duly delivered pursuant to Section 3.6(b), Buyer and Sellers shall, during the five (5) days following such delivery,

use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the Final Performance Adjustment Amount. If during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause the Accounting Referee to review the disputed items or amounts for the purpose of calculating the Final Performance Adjustment Amount (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accounting Referee shall consider only those items or amounts as to which the parties have disagreed. The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than fifteen (15) days from the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Buyer and Sellers. The cost of such review and report shall be borne by Buyer and Sellers in the reverse proportion that the aggregate dollar amounts of disputed items which are resolved in favor of Buyer or Sellers (as applicable) bears to the aggregate dollar amount of all disputed items resolved by the Accounting Referee.

(d) If the parties hereto agree, or the Accounting Referee determines, that the Final Performance Adjustment Amount is greater (the "Additional Amount") than the amount set forth in ATI's certificate delivered pursuant to Section 3.6(a), then within two (2) Business Days of such determination pursuant to this Section 3.6, Buyer and Sellers shall deliver a written notice to the Escrow Agent pursuant to the Escrow Agreement instructing the Escrow Agent to pay the Additional Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Buyer, and, if no further payments are or may become due pursuant to Section 3.4 hereof, the balance of the Escrow Amount plus the accrued interest thereon to ATI. The Escrow Account shall be the sole source of payment for any payment obligation of Sellers pursuant to Section 3.6.

**3.7 Allocation of Purchase Price.** Buyer shall, within 120 days after the Closing Date, prepare and deliver to Sellers a schedule (the "Allocation Schedule") allocating the Purchase Price and the Assumed Liabilities among the Acquired Assets in accordance with Treasury Regulation Section 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. ATI may propose to Buyer specific changes in the Allocation Schedule within ten (10) days of the receipt thereof. If no such changes are proposed in writing to Buyer within such time, Sellers will be deemed to have agreed to the Allocation Schedule. If such changes are proposed, Buyer and ATI will negotiate in good faith and will use their best efforts to agree upon the Purchase Price allocation. If Buyer and ATI cannot mutually resolve ATI's reasonable objections to the Allocation Schedule within ten (10) days after Buyer's receipt of such objections, such dispute with respect to the Allocation Schedule shall be presented to the Accounting Referee, on the next day for a decision that shall be rendered by the Accounting Referee within thirty calendar days thereafter and shall be final and binding upon each of the parties. The fees, costs and expenses incurred in connection therewith shall be shared in equal amounts by Buyer, on the one hand, and Sellers, on the other hand. Buyer and Sellers each shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation Schedule, and shall take no position

contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Sellers shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation. Notwithstanding any other provisions of this Agreement, the foregoing agreement shall survive the Closing Date.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby, jointly and severally, represent and warrant to Buyer as follows:

4.1 Existence; Good Standing and Power. Each Seller is a corporation validly existing and in good standing under the laws of the state of its incorporation, and has all requisite power and authority to own, lease and operate the Acquired Assets to be sold hereunder and to carry on its business as presently conducted. Each Seller is qualified or licensed to do business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it or the properties owned or leased by it requires qualification, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Each Seller has all requisite power and authority (a) to execute and deliver this Agreement and the Transaction Documents and (b) subject to entry of the Sale Order, to perform its obligations hereunder and thereunder.

4.2 Authority. The execution, delivery and performance of this Agreement and the Transaction Documents by each Seller, the performance of Sections 6.17(a) and 6.17(b) by each Seller, and subject to entry of the Sale Order, the performance by each Seller of its other obligations hereunder and thereunder and the consummation by each Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of each Seller.

4.3 Execution and Binding Effect. This Agreement has been and each of the Transaction Documents has been or will be at Closing, duly and validly executed and delivered by each Seller and constitutes, and, following the entering of the Sale Order, this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby will constitute (assuming in each case the due and valid authorization, execution and delivery thereof by the other parties hereto and thereto), a valid and legally binding obligation of such Seller enforceable against such Seller in accordance with its terms.

4.4 No Violation. Except as disclosed in Schedule 4.4 of the Disclosure Schedules, the execution, delivery and performance by each Seller of this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby, do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of or constitute a breach or default, or give rise to the creation of a Lien upon any of the Acquired Assets or to any right of acceleration, payment, amendment, cancellation or termination, under (a) the certificate of

incorporation or bylaws of any Seller or any resolution adopted by the board of directors of such Seller and not rescinded, (b) subject to entry of the Sale Order, any agreement or other instrument to which any Seller is a party or by which such Seller or any of its respective properties or assets is bound, (c) subject to entry of the Sale Order, any Order of any Governmental Entity to which any Seller is bound or subject, or (d) subject to entry of the Sale Order, any Law applicable to or binding on any Seller or any of its respective properties or assets, except, in the case of clauses (b), (c) and (d) of this Section 4.4, to the extent such conflict, violation, breach, default, creation of Lien or right would not be reasonably expected to have a Material Adverse Effect.

4.5 Third Party Approvals. Except for (a) any approvals required in order to comply with the provisions of the HSR Act, (b) any FCC Consent and State PUC Consent as required by applicable Law, (c) the Sale Order and (d) any other third party approvals as are reflected on Schedule 4.5 of the Disclosure Schedules hereto, including with respect to any computer software program and databases, the execution, delivery and performance by Sellers of this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby, do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which are both material to the Business and which have not been obtained by Sellers.

4.6 Financial Statements.

(a) ATI has delivered to Buyer copies of (i) the audited consolidated balance sheets of ATI and its Subsidiaries as of December 31, 2002 and 2001 and the related audited consolidated statements of income and of cash flows of ATI and its Subsidiaries for the years then ended and (ii) the unaudited consolidated balance sheets of ATI and its Subsidiaries as at September 30, 2003 and the related consolidated statements of income and cash flows of ATI and its Subsidiaries for the nine (9) month period then ended (such audited and unaudited statements, including the related notes and schedules thereto, are referred to herein as the "Financial Statements"). Each of the Financial Statements has been prepared in accordance with GAAP consistently applied throughout the periods presented and presents fairly in all material respects the consolidated financial position, results of operations and cash flows of ATI and its Subsidiaries as at the dates and for the periods indicated.

For the purposes hereof, the audited consolidated balance sheet of ATI and its Subsidiaries as at December 31, 2002 is referred to as the "Balance Sheet" and December 31, 2002 is referred to as the "Balance Sheet Date."

(b) ATI has delivered or made available to Buyer copies of each of Sellers' (i) post-Petition monthly latest flash reports and (ii) post-Petition monthly operating reports that Sellers' have filed with the Bankruptcy Court. To Sellers' Knowledge, each such monthly operating report is, and each monthly operating report to be filed with the Bankruptcy Court will be, complete, accurate and truthful. Each such monthly flash report previously delivered or made available to Buyer has been, and each flash report to be delivered to Buyer pursuant to Section 6.5(d) hereof will be, prepared

in good faith consistent with past practice and based on the Sellers' preliminary books and records.

(c) Seller has made all required filings with the U.S. Securities and Exchange Commission (the "SEC") since December 31, 2001. As of their respective dates of filing, all such filings complied as to form in all material respects with the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC promulgated thereunder applicable to such SEC filings, and such SEC filings did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

4.7 No Undisclosed Liabilities. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, Sellers have no indebtedness, obligation or Liability of any kind (whether accrued, absolute, contingent or otherwise, and whether due or to become due), that would have been required to be reflected in, reserved against or otherwise described on a balance sheet of a Seller or in the notes thereto in accordance with GAAP which (i) is not shown or described on the Balance Sheet or the other Financial Statements or the notes thereto, (ii) is not shown or described on Schedules 4.7, 4.9, 4.17 and 4.20 of the Disclosure Schedules or (iii) was not incurred in the Ordinary Course of Business since the Balance Sheet Date.

4.8 Title to Acquired Assets; Sufficiency. Except as set forth on Schedule 4.8 of the Disclosure Schedules, Sellers own and have good title to each of the Acquired Assets, free and clear of all Liens other than Permitted Liens. The Acquired Assets constitute all of the assets and properties used in or held for use in the Business (other than the Excluded Assets) and are sufficient for Buyer to conduct the Business (other than the Excluded Assets) from and immediately after the Closing Date without interruption and in the Ordinary Course of Business.

4.9 Communications Licenses. Sellers are the authorized legal holders or otherwise have rights to the Communications Licenses, which licenses constitute all of the material Licenses, from the FCC or the State PUCs that are necessary or required for and/or used in the operation of the Business as presently operated. All the Communications Licenses were duly obtained and are valid and in full force and effect, unimpaired by any condition, except those conditions that may be contained within the terms of such Communications Licenses which would not have a Material Adverse Effect on the Business as presently operated. Except as set forth on Schedule 4.9 of the Disclosure Schedules, Sellers are in compliance in all material respects with the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC and all applicable State PUCs. There is not now pending or, to Sellers' Knowledge, threatened, any action by or before the FCC or any State PUC in which the requested remedy is the revocation, suspension, cancellation, rescission or modification of any of the Communications Licenses. Schedule 2.1(d) of the Disclosure Schedules contains a complete and correct list of Sellers' Communications Licenses.

4.10 Absence of Certain Developments. Except as expressly contemplated by this Agreement or the Operational Restructuring Activities, as set forth on Schedule 4.10 of the Disclosure Schedules or in connection with the filing of the Cases, from the Balance Sheet Date through the date hereof Sellers have conducted the Business only in the Ordinary Course of Business.

4.11 Tangible Personal Property. All items of tangible personal property which are Acquired Assets and which, individually or in the aggregate, are material to the operation of the Business are in good condition and in a state of good maintenance and repair (ordinary wear and tear excepted) and are suitable for the purposes used.

4.12 Insurance. Sellers have insurance policies in full force and effect for such amounts as are sufficient for all requirements of Law and the Credit and Guaranty Agreement dated as of February 15, 2000 among Sellers and the lenders party thereto (the "Senior Credit Agreement").

4.13 Accounts and Notes Receivable and Payable.

(a) All accounts and notes receivable of Sellers have arisen from bona fide transactions in the Ordinary Course of Business and in the case of accounts and notes receivable that are Acquired Assets, are payable on ordinary trade terms and are reflected on Sellers' books and records in accordance with GAAP consistently applied, including reserves for returns and doubtful accounts.

(b) All accounts payable of Sellers reflected in the Balance Sheet or arising after the date thereof are the result of bona fide transactions in the Ordinary Course of Business and have been paid, are not yet due and payable or are being disputed in good faith and are reflected on Sellers' books and records in accordance with GAAP consistently applied.

4.14 Related Party Transactions.

(a) Except as set forth in Schedule 4.14(a) of the Disclosure Schedules, none of Sellers, any Affiliate of any Seller or any of their respective directors and officers with a title of Senior Vice President or higher (i) owns any direct or indirect material interest of any kind in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has a material right to participate in the profits of, any Person which is (A) a competitor, supplier, customer, landlord, tenant, of any Seller, (B) engaged in a business related to the Business, or (C) a participant in any transaction (including a loan transaction, other than employee advances in the Ordinary Course of Business) to which any Seller is a party or (ii) is a party to any Contract with any Seller.

(b) Except as set forth in Schedule 4.14(b) of the Disclosure Schedules, each Contract, agreement, or arrangement between any Seller on the one hand, and any Affiliate of any Seller or any director of any Seller or any officer of Sellers with a title of Senior Vice President or higher on the other hand, is on

commercially reasonable terms no more favorable to the Affiliate, director, officer or employee of such Seller than what any third party negotiating on an arms-length basis would expect.

4.15 Suppliers. Set forth on Schedule 4.15 of the Disclosure Schedules is a complete and accurate list of (a) the ten (10) most significant equipment suppliers and (b) the ten (10) most significant maintenance suppliers (based upon dollars billed to Sellers) during the quarter ended September 30, 2003, showing the approximate total billings to Sellers from each such supplier during such quarter. Except as set forth on Schedule 4.15 of the Disclosure Schedules, since September 30, 2003, there has not been any (i) termination, cancellation or curtailment of the business relationship of any Seller with any of the suppliers set forth on Schedule 4.15 of the Disclosure Schedules or (ii) written notice from any of the suppliers set forth on Schedule 4.15 of the Disclosure Schedules of an intent or request to so terminate, cancel, curtail or change, and, to Sellers' Knowledge, no written threat or written indication that any such termination, cancellation, curtailment or change is reasonably foreseeable, except, in each case, for such termination, cancellation, curtailment or change which would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

4.16 Fees and Expenses. Sellers have engaged the firm of Greenhill & Co., LLC to assist them in connection with the matters contemplated by this Agreement and will be responsible for the fees and expenses of such firm. Other than as described in the preceding sentence or as is payable by Sellers or their Affiliates and not by Buyer, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement, based upon arrangements made by or on behalf of any Seller or any of their respective Affiliates.

4.17 Compliance With Laws; Licenses. (a) Except as set forth on Schedule 4.17(a) of the Disclosure Schedules, since December 31, 2002 (i) Sellers have complied in all material respects with all Laws relating to the operation of the Business; and (ii) no Seller has received any written or other notice of or been charged with the violation of any Laws. To Sellers' Knowledge, no Seller is under investigation with respect to any material violation of any Laws.

(b) Schedule 4.17(b) of the Disclosure Schedules contains a list of all material Licenses (other than Communications Licenses) which are required for the operation of the Business as presently conducted and as presently intended to be conducted. Except as set forth on Schedule 4.17(a) of the Disclosure Schedules, Sellers currently have all such material Licenses which are required for the operation of the Business as presently conducted. No Seller is in default or violation, and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation, in any material respect of any term, condition or provision of such License to which it is a party, to which the Business is subject or by which its properties or assets are bound other than any such violation that would not reasonably be expected to have a Material Adverse Effect.

4.18 Environmental Matters. To Sellers' Knowledge, except as described on the attached Schedule 4.18 of the Disclosure Schedules:

(a) Each Seller and the operations of each Seller are in compliance with all applicable Environmental Laws, except to the extent such noncompliance would not reasonably be expected to have a Material Adverse Effect.

(b) No Seller is the subject of any Order or has received any written notice of any violations or Liabilities, including any investigatory, remedial or corrective obligations, arising under Environmental Laws and relating to the operation of the Business, except notices of such violation or Liability which would not reasonably be expected to have a Material Adverse Effect.

4.19 Intellectual Property. Schedule 4.19 of the Disclosure Schedules contains an accurate and complete list of all Intellectual Property owned by any Seller, other than unregistered trademarks, tradenames and copyrights, none of which is material to the operation of the Acquired Assets. Except as set forth in Schedule 4.19 of the Disclosure Schedules, there is no pending, or to Sellers' Knowledge, threatened claims or Litigation of any nature materially affecting or relating to the Intellectual Property. Schedule 4.19 of the Disclosure Schedules lists all written notices or written claims currently pending or received by any Seller that claim infringement of any material domestic or foreign letters patent, patent applications, patent licenses, software licenses and know-how licenses, trade names, trademark registrations and applications, service marks, copyrights, copyright registrations or applications, trade secrets, technical knowledge, know-how or other confidential proprietary information. Except as set forth on Schedule 4.19 of the Disclosure Schedules, there is, to Sellers' Knowledge, no reasonable basis upon which any claim may be asserted against any Seller for material infringement or misappropriation of any of the foregoing. Neither any Seller, nor to Sellers' Knowledge, any other Person, is in material default or violation of any Contract pursuant to which any Seller licenses Intellectual Property for the Business.

4.20 Contracts. Except as set forth on Schedule 4.20 of the Disclosure Schedules, Schedule G of Sellers' schedule of assets and liabilities as filed with the Bankruptcy Court contains a list of all pre-Petition material Contracts, including: (i) each Executory Contract containing a Non-Compete Covenant, (ii) each Executory Contract related to the purchases or sales of indefeasible rights of use or leases of capacity and (iii) each interconnection agreement with an ILEC. Schedule 4.20 of the Disclosure Schedules sets forth as of the date hereof, each material Executory Contract to which any Seller is a party and by or to which any Seller or any of their properties is currently bound or subject or may be bound or subject. True and complete copies of all material Executory Contracts have been delivered or made available to Buyer. All of the Assumed Contracts are valid, binding and enforceable in accordance with their respective terms, except as designated on the attached Schedule 4.20 of the Disclosure Schedules and except as such enforceability may be limited by (i) applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally and (ii) applicable equitable principles (whether considered in a proceeding at law or in equity). Except as set forth on Schedule 4.20 of the Disclosure Schedules, no

Seller is, and to Sellers' Knowledge, no other party thereto is, in material default in the performance, observance or fulfillment of any obligation under any Assumed Contract (other than any Cure Amounts to be paid hereunder by Buyer or Sellers, as applicable), and, to Sellers' Knowledge, no event has occurred, which with or without the giving of notice or lapse of time, or both, would constitute a material default thereunder. Except as set forth on Exhibit A of Schedule 4.20 of the Disclosure Schedules, Sellers have not entered into any material post-Petition Contracts (including interconnection agreements).

4.21 Real Property.

(a) Schedule 4.21(a) of the Disclosure Schedules lists, as of the date of this Agreement, all Real Property Leases relating to the operation of the Business to which any of Sellers is a party.

(b) Except as set forth on Schedule 4.21(b) of the Disclosure Schedules, the Real Property Leases constitute all interests in real property currently used or currently held for use in connection with the Business by Sellers and which are necessary for the continued operation of the Business by Sellers as the Business is currently conducted.

4.22 Taxes. Except as described on the attached Schedule 4.22 of the Disclosure Schedules:

(a) (i) all income Tax Returns and all other material Tax Returns required to be filed by or on behalf of Sellers or any Affiliated Group have been duly and timely filed with the appropriate Governmental Entity in all material respects, in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns are true, complete and correct in all material respects, (ii) except as prohibited or stayed by the Bankruptcy Code, all Taxes payable by or on behalf of Sellers or any Affiliated Group have been fully and timely paid or adequately reserved for on Sellers' Financial Statements (in each case, other than Taxes that, in the aggregate, are not material in amount), and any Taxes not yet due have been adequately accrued in accordance with GAAP, and (iii) no waivers of statutes of limitation have been given or requested with respect to any Tax Return required to be filed by or on behalf of Sellers or any Affiliated Group;

(b) except as prohibited or stayed by the Bankruptcy Code, for all open Tax years all Taxes required to be withheld, collected or deposited by Sellers have been timely withheld, collected and deposited in all material respects and, to the extent required by Law, all such Taxes have been paid when due to the appropriate Governmental Entity and each Seller is in compliance in all material respects with respect to all withholding and information reporting requirements under all applicable Laws;

(c) no federal, state, local or foreign Tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to Sellers, and none of Sellers or any predecessor has received from any federal, state, local or foreign

Governmental Entity (including jurisdictions where Sellers have not filed a Tax Return) any (A) notice indicating an intent to open an audit or other review, or commence any other administrative or judicial Tax proceeding that is still active, (B) request for information related to Tax matters where the examination or investigation giving rise to such request is still open, or (C) notice of deficiency or proposed adjustments for any amount of Tax proposed, asserted, or assessed by any Governmental Entity that remains unpaid. No written claim has been made by a Governmental Entity in a jurisdiction where such Seller does not file Tax Returns that such Seller is or may be subject to taxation by that jurisdiction; and

(d) Buyer and the Acquired Assets will not be bound by a Tax sharing, Tax allocation, Tax indemnity or other similar agreements or arrangements (whether or not written) with respect to or involving Sellers or the Acquired Assets after the Closing Date.

#### 4.23 Employee Benefits; Labor Matters.

(a) Schedule 4.23(a) of the Disclosure Schedules sets forth a list of all material “employee benefit plans,” as defined in section 3(3) of ERISA (whether or not subject to ERISA) other than a “multiemployer plan,” as defined in Section 3(37) of ERISA, and each material cafeteria, material bonus, incentive or deferred compensation, severance, termination, retention, change of control, stock option, stock appreciation, stock purchase, phantom stock or other equity-based, loan, performance or other employee or retiree benefit or compensation plan, program, arrangement, agreement, policy or understanding, whether written or unwritten, under which any Employee or former Employee (including any beneficiaries and dependents thereof) is or may become eligible to participate or derive a benefit and that is or has been maintained, established or contributed to or required to be contributed to by Sellers (“Employee Benefit Plans”). With respect to each Employee Benefit Plan, a copy of each of the following documents (if applicable) has been provided or made available to Buyer: (i) the most recent plan document for any Employee Benefit Plan covered by ERISA and all amendments thereto; (ii) the most recent summary plan description; (iii) the most recent trust document or any third party funding vehicle (including insurance) and all amendments thereto; (iv) the two most recent Forms 5500 required to have been filed with the IRS and all schedules thereto, and the most recent IRS determination letter. All contributions required to have been made by Sellers under any Employee Benefit Plan or any applicable Law to any trusts established thereunder or in connection therewith have been made by the due date therefore (including any extensions). The Employee Benefit Plans have been administered in accordance with their terms in all material respects and are in compliance with applicable Law in all material respects. Neither Sellers nor any trade or business (whether or not incorporated) which is or has ever been under common control, or which is or has ever been treated as a single employer, with Sellers under Section 414(b), (c), (m) or (o) of the Code (“ERISA Affiliate”) have at any time within the last six years, maintained, contributed to, or had any obligation to contribute to, or has any liability (fixed or contingent) with respect to, any “single-employer plan” as defined in Section 4001(a)(15) of ERISA or any plan subject to Sections 4063 or 4064 of ERISA (“multiple employer plan”).

(b) Each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code, and the trust (if any) forming a part thereof, is qualified and tax exempt under Code Section 401(a) and 501(a) and has received a favorable determination letter from the IRS as to its qualification under the Code and to the effect that each such trust is exempt from taxation under Section 501(a) of the Code, which determination letter covers the GUST Amendments and to the Knowledge of Sellers, nothing has occurred since the date of such determination letter that could reasonably be expected to adversely affect such qualification or tax-exempt status.

(c) The Sellers do not provide nor are they obligated to provide, any life insurance or health benefits, including prescription drugs (whether or not insured) to any individual after his or her termination of employment or service with any of the Sellers, except as may be required under COBRA and at the expense of the individual or the individual's beneficiary and except as provided under severance agreements. Sellers and their ERISA Affiliates which maintain a "group health plan" within the meaning of Section 5000(b)(1) of the Code have complied in all material respects with the notice and continuation requirements of COBRA and the regulations thereunder and comparable state laws.

(d) Schedule 4.23(d) of the Disclosure Schedules lists each multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which the Sellers or their ERISA Affiliates are obligated to contribute ("Multiemployer Plan"), and there is no potential liability under any other multiemployer plan to which the Sellers or their ERISA Affiliates are, or within the preceding six years were, obligated to contribute. To Sellers' Knowledge: (i) no condition exists and (ii) no event has occurred with respect to any Multiemployer Plan that presents a material risk of a complete or partial withdrawal of the Sellers or any ERISA Affiliate under subtitle E of Title IV of ERISA and the Sellers and their ERISA Affiliates have not, within the preceding six years, withdrawn in a complete or partial withdrawal from any multiemployer plan or incurred any contingent liability under Section 4204 of ERISA. To the Knowledge of Sellers, no Multiemployer Plan is in "reorganization" or "insolvent."

(e) There are no collective bargaining agreements with any labor union representing Sellers' Employees. There is no Employee labor strike, dispute, slowdown, or stoppage pending or, to the Sellers' Knowledge, threatened by Employees against Sellers. To Sellers' Knowledge: (i) no collective bargaining agreement is currently being negotiated and (ii) no organizing effort is currently being made or has been threatened with respect to the Sellers' Employees. Sellers are and have been in material compliance with all Laws relating to employment practices, terms and conditions of employment (including termination of employment), wages, hours of work and occupational safety and health, and worker classification and at all times since November 23, 1999, has been in material compliance with the requirements of the Immigration Reform Control Act of 1986. The Sellers are in compliance with WARN and any similar state or local "mass layoff" or "plant closing" Law in all material respects. There is no unfair labor practice complaint pending or, to the Knowledge of the Sellers, threatened against the Sellers before the National Labor Relations Board.